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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 89-643-C - ORDER NO. 90-1150
DECEMBER 3, 1990

IN RE: Application of NCN Communications,) ORDER DENYING
Inc. for a Certificate of Public) PETITION FOR
Convenience and Necessity to Operate) REHEARING AND
as a Reseller of Intrastate Resold) RECONSIDERATION
Telecommunications Services.)

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition for Rehearing and Reconsideration filed on behalf of NCN Communications, Inc. (NCN) pursuant to S.C. Code Ann., §58-9-1200 (1976). NCN seeks a rehearing or reconsideration of Order No. 90-988, dated October 29, 1990. NCN alleges several allegations of error on the part of the Commission in Order No. 90-988.

NCN alleges that the finding of the Commission that the principals of NCN lack the "required telecommunications experience and qualifications expected by this Commission" is in error. The information provided to the Commission as to the officers and management of NCN is confusing at best. According to information provided to the Commission, the management listed in NCN's application had resigned their position. The same day, three individuals were listed as new officers. This information was contained in Hearing Exhibit No. 1 and is the monthly newsletter of

NCN. While NCN now contends that these individuals are still associated with NCN, it is unclear as to what their capacity is at this time. Additionally, NCN points out in its Petition that as of July 16, 1990, the new officers referred to in Commission Order No. 90-988 are no longer involved in NCN management. This confusion and obviously complete changeover in a short period of time does not change the Commission's opinion that NCN management lacks the experience and technical capability and support to effectively manage and operate a telecommunications resale service in this State. This apparent constant changeover and upheaval in management does not give the Commission comfort that the management is in charge of the operations of NCN.

The Commission also found that NCN's witness, Mr. Harold Redden, had insufficient experience in the telecommunications field. NCN contends that this finding is in error because NCN was not relying on Mr. Redden's qualifications to show its experience in the telecommunications field. Mr. Redden was at a disadvantage in his testimony because of rapidly unfolding developments concerning the MCI litigation and the purchase of NCN by the Gentry Group. NCN contends that at rehearing, it would offer another witness who is completely familiar with the current status of NCN, its dealings with underlying carriers, the Gentry Group purchase and other facts set forth in the Petition. The Commission finds that NCN had ample opportunity at its hearing to bring a witness who was qualified to speak to all aspects of the Company's operations. It was incumbent upon NCN to bring a witness qualified

to speak to all aspects of the Company's operations. While NCN might not have relied upon Mr. Redden's qualifications to show its experience in the telecommunications field, the witness's lack of experience was indicative of NCN's inadequacies in its sales and marketing services as well as its management. The fact another witness may be more knowledgeable, does not cause the Commission to determine that a rehearing or reconsideration is necessary in this matter. NCN should have been prepared to make its case when it had the opportunity.

The Commission's findings concerning the Gentry Group and that there was not sufficient information to determine whether NCN had the type of organization, ownership, and structure which would allow the Company to fulfill the obligations of a reseller of telecommunications services in South Carolina, is alleged to be in error by NCN. NCN presented updated information in its Petition which it contends would satisfy the Commission on these points. Even though NCN has additional evidence, the Commission is of the opinion that some of this information could have been presented at the hearing had the witness been knowledgeable in this area and too, in that even if this information had been available or even considering this information at this time, the Commission is still not inclined to grant rehearing or reconsider Order No. 90-988.

NCN contends that the Commission's finding that NCN lacked "appreciation for the real differences that exist in the reseller marketplace and the need for the ratepayers of South Carolina to receive accurate information sufficient to enable them to make an

intelligent, fact-based choice of telecommunications services" was in error. NCN, in its Petition, provides information dealing with how NCN handles customer service complaints. While this information is informative, it does not go to the gist of the Commission's finding. Order No. 90-988, Paragraph 2(d) is more concerned with the multilevel marketing approach used by the Company. This multilevel marketing or pyramid approach is unique to interexchange carriers operating in South Carolina. The Commission is of the opinion that NCN does not exercise sufficient controls over those persons who are independent distributors (ID's) of the Company's services. Order No. 90-988 sufficiently discusses the Commission's concerns in this regard. The Commission finds no new information in the Petition of NCN that would cause the Commission to grant rehearing on this issue.

NCN further alleges error on the part of the Commission in Paragraphs 2(e) and (f) of Order No. 90-988 in which the Commission noted a lack of control that NCN exercised over its sales force. This was also addressed by the Commission in Paragraph 2(d). Again, the Commission is of the opinion that the allegations of error of NCN do not create a need by the Commission to reconsider or rehear Order No. 90-988.

NCN also takes issue with Paragraph 2(g) of Order No. 90-988 in which the Commission determined that NCN placed more emphasis on the sale of training materials than the sale of telecommunications service. NCN provided information to refute this finding. The Commission is of the opinion, however, that the record supports the

Commission's finding that the Applicant placed insufficient emphasis on service to the long distance customer. The entire structure of NCN encourages that emphasis be placed on the DPS training package, as well as, such things as the "Profit Builder".

NCN alleges that, in Paragraph 2(h) of Order No. 90-988, the Commission used the fact that NCN had not acquired a long distance carrier as a reason to deny its Application. While the Commission found that it was not absolutely necessary for the Applicant to have specified the long distance carrier with whom it will do business in the State, the Commission considered this failure in listing the totality of the circumstances surrounding this Application. The Commission stated that this is "another indication to this Commission that the Applicant lacks the experience and ability to meet the qualifications of a reseller in this State." Based on the Commission's finding, the Commission sees no reason to rehear or reconsider this matter on this issue.

As to the violation of the Commission's cease and desist Order issued on May 23, 1990, NCN alleges that its violation was inadvertent and an oversight of NCN's billing department, that NCN has or will credit the appropriate accounts for the service rendered, billed and collected and that NCN could submit information in support of these statements at rehearing. Again, the Commission is of the opinion that NCN seeks to have a rehearing to provide information which it should have provided the Commission at the time of the hearing in this matter. The Commission is of the opinion that NCN should have been prepared to present all of

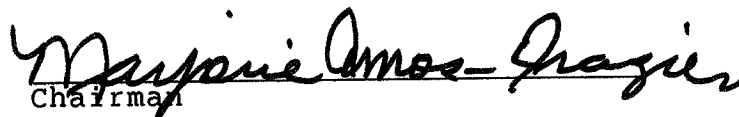
this evidence at the time of the hearing. It was incumbent upon NCN to present this information since it has the burden of proof in this matter. The rehearing or reconsideration on issues or evidence which should have been presented to the Commission at the time of NCN's hearing is not sufficient for the Commission to grant rehearing in this matter.

In light of all of the allegations of error espoused by NCN and the Commission's consideration thereof, the Commission is of the opinion that the Petition for Rehearing and Reconsideration filed on behalf of NCN should be denied. NCN has presented no information which would cause the Commission to modify, amend, rehear, or reconsider Order No. 90-988. The Commission's findings and conclusions in Order No. 90-988 are not in violation of constitutional or statutory provisions; not in excess of the Commission's statutory authority; not made upon unlawful procedure; not affected by other error of law; not clearly erroneous in light of the substantial evidence on the whole record nor arbitrary or

capricious or characterized by abuse of discretion or clearly
unwarranted exercise of discretion.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)